

POLYGRAPH

[H.A.S.C. No. 98-46]

FULL COMMITTEE CONSIDERATION  
OF  
H.R. 4681  
RELATING TO THE ADMINISTRATION OF POLYGRAPH  
EXAMINATIONS AND PREPUBLICATION REVIEW  
REQUIREMENTS BY FEDERAL AGENCIES

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H E A R I N G  
BEFORE THE  
COMMITTEE ON ARMED SERVICES  
HOUSE OF REPRESENTATIVES  
NINETY-EIGHTH CONGRESS  
SECOND SESSION  

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SEPTEMBER 19, 1984



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COMMITTEE ON ARMED SERVICES

NINETY-EIGHTH CONGRESS, SECOND SESSION

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(II)

**FULL COMMITTEE CONSIDERATION OF H.R. 4681, RELATING TO THE ADMINISTRATION OF POLYGRAPH EXAMINATIONS AND PREPUBLICATION REVIEW REQUIREMENTS BY FEDERAL AGENCIES**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
*Washington, DC, Wednesday, September 19, 1984.*

The committee met, pursuant to call, at 10:47 a.m., in room 2118, Rayburn House Office Building, Hon. Charles E. Bennett, presiding.

Mr. BENNETT. The committee will come to order. This morning for our regular meeting we will hear the action of the Investigations Subcommittee on H.R. 4681, the polygraph examination bill.

Mr. Nichols.

**STATEMENT OF HON. BILL NICHOLS, A REPRESENTATIVE FROM ALABAMA, CHAIRMAN, INVESTIGATIONS SUBCOMMITTEE**

Mr. NICHOLS. Thank you, Mr. Chairman.

Mr. Chairman, H.R. 4681, a bill relating to the administration of polygraph examinations, was reported with an amendment by the Committee on Post Office and Civil Service on August 6, and was sequentially referred to this committee, as well as to the Judiciary Committee and the Permanent Select Committee on Intelligence.

H.R. 4681, as reported, would prohibit Federal agencies from administering polygraph examinations to employees, or applicants for employment, except as part of a specific investigation into felonious criminal conduct.

The bill would also prohibit agencies from requiring employees, and applicants for employment, to enter into an agreement to submit their writings to prepublication review. The bill would exempt the Central Intelligence Agency and the National Security Agency from those prohibitions.

On September 6 the Investigations Subcommittee held a hearing and Gen. Richard Stilwell, U.S. Army retired, the Deputy Under Secretary of Defense for Policy, made a very persuasive case for exempting the Department of Defense from H.R. 4681's prohibition on polygraph examinations. He pointed to recent espionage convictions as evidence of the continuing efforts of our adversaries to obtain highly classified intelligence and program information. General Stilwell emphasized the Department of Defense was not seeking a total exemption from the polygraph prohibition:

Witnesses from the National Security Agency and the Central Intelligence Agency questioned the anomaly of H.R. 4681 of granting an exemption to their agencies, while failing to provide similar consideration to the Department of Defense. They noted that the Department of Defense receives much of the intelligence data dis-

seminated by their agencies; consequently, it has the same requirements for assuring the reliability of its personnel as their agencies do.

The Investigations Subcommittee, in the markup session on September 12, approved an amendment to H.R. 4681 to provide a limited exemption for the Department of Defense. That amendment specifies seven areas in which the Department would be permitted to administer polygraph examinations to its civilian and military personnel, as well as to experts and consultants under contract to the Department.

I might add, Mr. Chairman, and members of the committee, that this amendment was developed in consultation with representatives of the Department of Defense. I believe that it should be responsive to the requirements of the Department for authority to conduct polygraph examinations in the personnel security, intelligence, and counterintelligence field. But at the same time, it does not authorize the Department to administer polygraph examinations indiscriminately.

I believe it is a reasonable effort to accommodate the needs of the Department of Defense and urge the committee to agree with it.

[H.R. 4681 and the complete text of Mr. Nichols' statement follow:]

98TH CONGRESS  
2D SESSION

# H. R. 4681

[Report No. 98-961, Part I]

Relating to the administration of polygraph examinations and prepublication review requirements by Federal agencies.

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 1984

Mr. BROOKS introduced the following bill; which was referred to the Committee on Post Office and Civil Service

MARCH 22, 1984

Additional sponsors: Mr. FASCELL, Mr. WEISS, Mr. NEAL, Mr. FRANK, Mr. COLEMAN of Texas, Mrs. BOXER, Mr. LEVINE of California, Mr. OWENS, Mr. KOLTER, Mr. ACKERMAN, Mr. AKAKA, Mr. ANDREWS of Texas, Mr. BARNES, Mr. BEDELL, Mr. BERMAN, Mr. FAUNTROY, Mr. FAZIO, Mr. FISH, Mr. FROST, Mr. GARCIA, Mr. GEJDENSON, Mr. GONZALEZ, Mrs. HALL of Indiana, Mr. KOSTMAYER, Mr. LOWEY of Washington, Mr. McCLOSKEY, Mr. MARKEY, Mr. MATSUI, Mr. MILLER of California, Mr. MITCHELL, Mr. MEAZEK, Mr. OTTINGER, Mr. RANGEL, Mr. RICHARDSON, Mr. RODINO, Mr. SABO, Mr. SMITH of Florida, Mr. STOKES, Mr. STUDDS, and Mr. UDALL

AUGUST 6, 1984

Reported with an amendment and referred to the Committees on Armed Services and the Judiciary, and to the Permanent Select Committee on Intelligence, for a period ending not later than September 21, 1984, for consideration of such portions of the bill and amendment as fall within the jurisdiction of those committees pursuant to rule X, clauses 1(c) and 1(m), and rule XLVIII, clause 2, respectively

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 30, 1984]

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## A BILL

Relating to the administration of polygraph examinations and  
prepublication review requirements by Federal agencies.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       *That this Act may be cited as the "Federal Polygraph Limi-*  
4       *tation and Anti-Censorship Act of 1984".*

5       *SEC. 2. (a) Chapter 73 of title 5, United States Code,*  
6       *is amended by adding at the end thereof the following new*  
7       *subchapter:*

8       *"SUBCHAPTER VI—POLYGRAPH EXAMINA-*  
9       *TION AND PREPUBLICATION REVIEW RE-*  
10       *STRICTIONS*

11       *"§ 7361. Definitions*

12       *"For purposes of this subchapter—*

13               *"(1) the term 'agency' means—*

14                       *"(A) an Executive agency;*

15                       *"(B) the United States Postal Service;*

16                       *"(C) the Postal Rate Commission;*

17                       *"(D) the Administrative Office of the United*  
18               *States Courts;*

19                       *"(E) the Library of Congress;*

20                       *"(F) the Government Printing Office;*

21                       *"(G) the Office of Technology Assessment;*

22                       *"(H) the Congressional Budget Office;*

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1           *“(I) the Office of the Architect of the Cap-*  
2           *itol; and*

3           *“(J) the Botanic Garden;*

4           *“(2) the term ‘employee’ means—*

5           *“(A) an individual employed by an agency;*

6           *“(B) a Congressional employee (other than*  
7           *an individual under subparagraph (A)); and*

8           *“(C) an expert or consultant who is under*  
9           *contract under section 3109 of this title with an*  
10          *agency, including, in the case of an organization*  
11          *performing services under such section, an*  
12          *individual involved in the performance of such*  
13          *services;*

14          *“(3) the term ‘classified information’ means*  
15          *information—*

16          *“(A) specifically authorized under criteria*  
17          *established by statute or Executive order to be*  
18          *kept secret in the interest of national defense or*  
19          *foreign policy; and*

20          *“(B) in fact properly classified pursuant to*  
21          *such statute or Executive order;*

22          *“(4) the term ‘polygraph examination’ means an*  
23          *interview with an individual which involves the use of*  
24          *a device designed to permit the examiner to make an*  
25          *inference or a determination, by evaluation of meas-*

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1 *ured physiological responses, concerning whether the*  
2 *individual has truthfully or deceptively responded to*  
3 *inquiries made in such interview;*

4 *“(5) the term ‘action’, as used with respect to an*  
5 *employee or applicant for employment, means—*

6 *“(A) a personnel action under clauses (i)*  
7 *through (x) of section 2302(a)(2)(A) of this title;*

8 *“(B) a decision concerning clearance for*  
9 *access to classified information; and*

10 *“(C) a performance evaluation (other than*  
11 *under chapter 43 of this title);*

12 *in the case of such employee or applicant; and*

13 *“(6) the term ‘prepublication review’ means sub-*  
14 *mission of information to an agency for the purpose of*  
15 *permitting such agency to examine, alter, excise, or*  
16 *otherwise edit or censor such information before it is*  
17 *publicly disclosed, but does not include any such sub-*  
18 *mission with respect to information which is to be dis-*  
19 *closed by an employee in such employee’s official*  
20 *capacity.*

21 ***“§ 7362. Restrictions relating to polygraph examinations***

22 *“(a) An agency may not—*

23 *“(1) require, threaten to require, or, except as pro-*  
24 *vided in subsection (b), request any employee or*

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1     *applicant for employment to submit to a polygraph*  
2     *examination;*

3             *“(2) take, or threaten to take, any action against*  
4     *an employee or applicant for employment—*

5             *“(A) on the basis of that individual’s refusal*  
6     *to submit to a polygraph examination; or*

7             *“(B) on the basis of any inference or deter-*  
8     *mination (referred to in section 7361(4) of this*  
9     *title) made from that individual’s performance in*  
10    *the course of a polygraph examination; or*

11            *“(3) fail to take, or threaten to fail to take, any*  
12    *action on behalf of an employee or applicant for*  
13    *employment—*

14            *“(A) on the basis of that individual’s refusal*  
15    *to submit to a polygraph examination; or*

16            *“(B) on the basis of any inference or deter-*  
17    *mination described in paragraph (2)(B).*

18            *“(b)(1) An agency may request an employee, in writing,*  
19    *to submit voluntarily to a polygraph examination—*

20            *“(A) if the examination is administered as part of*  
21    *a specific investigation into alleged criminal conduct—*

22            *“(i) after the completion, by other means, of*  
23    *as thorough an investigation as circumstances*  
24    *reasonably permit; and*

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1           “(ii) solely for the development of informa-  
2           tion essential to that investigation;

3           “(B) if the individual is reasonably believed to  
4           have knowledge of the matter under investigation; and

5           “(C) if the alleged criminal conduct constitutes an  
6           offense punishable by death or imprisonment for a term  
7           exceeding one year.

8           “(2) A polygraph examination under this subsection  
9           may be administered only by an individual employed by, and  
10          under the direction of—

11          “(A) the Central Intelligence Agency;

12          “(B) the National Security Agency;

13          “(C) the Federal Bureau of Investigation;

14          “(D) the United States Secret Service;

15          “(E) the Drug Enforcement Administration;

16          “(F) the Bureau of Alcohol, Tobacco, and Fire-  
17          arms;

18          “(G) the Postal Inspection Service, United States  
19          Postal Service;

20          “(H) the Intelligence and Security Command,  
21          United States Army;

22          “(I) the Criminal Investigation Command,  
23          United States Army;

24          “(J) the Naval Investigative Service, Department  
25          of the Navy;

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1           “(K) the Office of Special Investigations, Depart-  
2           ment of the Air Force; or  
3           “(L) the Marine Corps.

4   **“§ 7363. Restrictions relating to prepublication review**

5           “An agency may not—

6           “(1) request, require, or threaten to require, an  
7           employee or applicant for employment to enter into an  
8           agreement, any part of which requires prepublication  
9           review;

10          “(2) take, or threaten to take, any action against  
11          an employee or applicant for employment on the basis  
12          of that individual's refusal to enter into such an  
13          agreement;

14          “(3) take, or threaten to take, any action against  
15          an employee or applicant for employment on the basis  
16          of that individual's refusal to comply with any of the  
17          provisions of such an agreement which require pre-  
18          publication review;

19          “(4) fail to take, or threaten to fail to take, any  
20          action on behalf of an employee or applicant for em-  
21          ployment on the basis of a refusal referred to in  
22          paragraph (2) or (3); or

23          “(5) establish or enforce, or threaten to establish  
24          or enforce, any other requirement in order to compel  
25          prepublication review.

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1 ***“§ 7364. Remedies***

2       “(a)(1) *Subject to paragraph (2) and subsection (b),*  
3 *any person aggrieved by a violation of section 7362 or 7363*  
4 *of this title may bring a civil action against the United*  
5 *States for equitable or monetary relief, or both, in the district*  
6 *court of the United States for the district in which that*  
7 *person resides, for the District of Columbia, or, in the case of*  
8 *an employee or former employee, for the district in which that*  
9 *person was employed at the time the cause of action arose.*

10       “(2) *A civil action under this subsection shall be forever*  
11 *barred unless commenced within two years after the cause of*  
12 *action arose. For purposes of this paragraph, a cause of*  
13 *action shall be deemed to have arisen on the date that the*  
14 *person aggrieved knew, or with reasonable diligence should*  
15 *have known, of the violation concerned.*

16       “(3) *The court shall award reasonable costs of litiga-*  
17 *tion, and may award reasonable attorney fees, to a prevailing*  
18 *plaintiff in an action brought under this subsection.*

19       “(b)(1) *If a person aggrieved by a violation of section*  
20 *7362 or 7363 of this title would also be entitled to initiate*  
21 *proceedings for remedial action under agency administrative*  
22 *procedures, such person may raise the matter under subsec-*  
23 *tion (a) or under such administrative procedures, but not*  
24 *both.*

25       “(2) *A person shall be deemed to have exercised the*  
26 *option under this subsection to raise a matter either under*

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1 *subsection (a) or under agency administrative procedures*  
2 *upon the timely commencement of an action by such person*  
3 *in accordance with the Federal Rules of Civil Procedure or*  
4 *the timely initiation of such administrative procedures by*  
5 *such person, as the case may be.*

6 *“(3) For purposes of this subsection, the term ‘agency*  
7 *administrative procedures’ means any formal process of*  
8 *review by an agency provided under statute, regulation, or*  
9 *Executive order, including judicial review of any determina-*  
10 *tion made in the course of such process.*

11 ***“§ 7365. Exemptions***

12 *“Sections 7362 and 7363 of this title do not apply—*

13 *“(1) to the Central Intelligence Agency, in the*  
14 *case of any individual employed by, or detailed to, the*  
15 *Central Intelligence Agency, any individual applying*  
16 *for a position in the Central Intelligence Agency, or*  
17 *any expert or consultant under contract with the*  
18 *Central Intelligence Agency; or*

19 *“(2) to the National Security Agency, in the case*  
20 *of any individual employed by, or detailed to, the Na-*  
21 *tional Security Agency, any individual applying for a*  
22 *position in the National Security Agency, or any*  
23 *expert or consultant under contract with the National*  
24 *Security Agency.”.*

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1       (b) *The analysis for chapter 73 of title 5, United States*  
2 *Code, is amended by adding at the end thereof the following:*

*"SUBCHAPTER VI—POLYGRAPH EXAMINATION AND  
PREPUBLICATION REVIEW RESTRICTIONS*

*"7361. Definitions.*  
*"7362. Restrictions relating to polygraph examinations.*  
*"7363. Restrictions relating to prepublication review.*  
*"7364. Remedies.*  
*"7365. Exemptions."*

3       *SEC. 3. (a)(1) The provisions of any agreement referred*  
4 *to in section 7363(1) of title 5, United States Code (as added*  
5 *by this Act) are, to the extent that such provisions relate to*  
6 *prepublication review, hereby rescinded.*

7       *(2) The head of each agency concerned shall provide*  
8 *written notice to each individual who, immediately before this*  
9 *Act takes effect, was a party to any such agreement, inform-*  
10 *ing such individual of—*

11             *(A) the enactment of this section; and*

12             *(B) the provisions of the agreement rescinded as a*  
13 *result of the enactment of this section.*

14       *(b) Nothing in subsection (a) applies with respect to the*  
15 *Central Intelligence Agency or the National Security*  
16 *Agency, or to any agreement which requires prepublication*  
17 *review by either of those agencies.*

18       *(c) For purposes of this section, "prepublication review"*  
19 *and "agency" each has the meaning given that term in sec-*  
20 *tion 7361 of title 5, United States Code (as added by this*  
21 *Act).*

22       *SEC. 4. This Act shall take effect on October 1, 1984.*

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PREPARED STATEMENT OF HON. BILL NICHOLS

Mr. Chairman, H.R. 4681, a bill relating to the administration of polygraph examinations and prepublication review requirements by Federal agencies, was reported with an amendment by the Committee on Post Office and Civil Service on August 6, and was sequentially referred to this committee, as well as to the Judiciary Committee and the Permanent Select Committee on Intelligence. That referral requires each of the committees to report not later than September 21.

H.R. 4681, as reported, would prohibit Federal agencies from administering polygraph examinations to employees, or applicants for employment, except as part of a specific investigation into felonious criminal conduct. The bill would also prohibit agencies from requiring employees, and applicants for employment, to enter into an agreement to submit their writing to prepublication review. The bill would exempt the Central Intelligence Agency and the National Security Agency from those prohibitions.

On September 6 the Investigations Subcommittee held a hearing on H.R. 4681. Gen. Richard Stilwell, USA (Ret.), the Deputy Under Secretary of Defense for Policy, in his testimony at that hearing, made a persuasive case for exempting the Department of Defense from H.R. 4681's prohibition on polygraph examinations. He pointed to recent espionage convictions as evidence of the continuing efforts of our adversaries to obtain highly classified intelligence and program information. He also referred to the polygraph's demonstrated utility in the personnel security programs at the Central Intelligence Agency and the Defense Intelligence Agency. General Stilwell emphasized that the Department of Defense was not seeking a total exemption from the polygraph prohibition of H.R. 4681. He observed that the department had developed a proposed polygraph policy to supplement the personnel security background investigation program as a means of detecting and deterring espionage. The witnesses from the National Security Agency and the Central Intelligence Agency questioned the anomaly in H.R. 4681 of granting an exemption to their agencies, while failing to provide similar consideration to the Department of Defense. They noted that the Department of Defense receives much of the intelligence data disseminated by their agencies; consequently, it has the same requirements for assuring the reliability of its personnel as their agencies. Both the National Security Agency and the Central Intelligence Agency witnesses testified that they regard the polygraph as an essential investigative aid in determining the security suitability of employees entrusted with highly classified information.

The Investigations Subcommittee, in a markup session on September 12, approved an amendment to H.R. 4681 to provide a limited exemption for the Department of Defense. That amendment specifies seven areas in which the department would be permitted to administer polygraph examinations to its civilian and military personnel, as well as to experts and consultants under contract to the department. Those areas are (1) individuals with access to information specifically designated by the Secretary of Defense under a special access program; (2) interim clearance of an individual for a special access program; (3) to determine eligibility for certain positions with the Defense Intelligence Agency designated by the Secretary of Defense; (4) to determine eligibility of non-citizens of the United States for access to classified information; (5) to determine reliability of persons to be used as agents or sources in foreign intelligence or counterintelligence operations; (6) for purposes of exculpation in a criminal, counterintelligence or personnel security investigation when requested by the individual; and (7) to resolve derogatory allegations developed in a personnel security investigation, if the allegations cannot otherwise be resolved, and with the consent of the individual.

This amendment was developed in consultation with representatives of the Department of Defense. I believe that it should be responsive to the requirements of the department for authority to conduct polygraph examinations in the personnel security, intelligence and counterintelligence fields; but, at the same time, it does not authorize the department to administer polygraph examinations indiscriminately. I believe it is a reasonable effort to accommodate the needs of the Department of Defense within the provisions of H.R. 4681, and I urge the committee to agree to it.

NICHOL031

AMENDMENTS RECOMMENDED BY THE INVESTIGATIONS SUBCOMMITTEE  
TO H.R. 4681 AS REPORTED BY THE COMMITTEE ON POST OFFICE  
AND CIVIL SERVICE

Page 9, line 12, insert '(a)' before 'Sections'.

Page 9, line 20, insert 'and assigned to,' after  
'employed by,'.

Page 9, line 24, strike out the quotation marks and the  
second period.

Page 9, after line 24, insert the following:

1       '(b) Section 7362 of this title does not apply to the  
2 Department of Defense in the case of any individual employed  
3 by, or detailed to, the Department of Defense, any individual  
4 applying for a position in the Department of Defense, or any  
5 expert or consultant under contract with the Department of  
6 Defense--  
7       '(1) if the individual has access under a special  
8 access program to classified information that has been  
9 specifically designated by the Secretary of Defense for  
10 the purposes of this paragraph or is being considered for  
11 a position in which access to such information will be

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1 required;  
2       ''(2) if interim clearance of the individual for a  
3 special access program is required;  
4       ''(3) if the individual is employed in or assigned to  
5 (or is being considered for employment in or assignment  
6 to) a position in the Defense Intelligence Agency  
7 specified by the Secretary of Defense for the purposes of  
8 this paragraph;  
9       ''(4) in the case of an individual who is not a  
10 citizen of the United States, if a polygraph examination  
11 is necessary to assist in determining the initial  
12 eligibility of the individual for access to classified  
13 information or is necessary to ensure that continued  
14 access by the individual to classified information is  
15 clearly consistent with the national security;  
16       ''(5) if a polygraph examination is necessary for  
17 determining the suitability, reliability, or credibility  
18 of an individual who is used as, proposed for use as, or  
19 purports to be an agent, source, or operative in foreign  
20 intelligence or counterintelligence;  
21       ''(6) if a polygraph examination is conducted at the  
22 request of an individual who is the subject of a  
23 criminal, counterintelligence, or personnel security  
24 investigation, as a means of exculpation with respect to  
25 allegations arising in the course of the investigation;

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1       and  
2       ''(7) if a polygraph examination is necessary to  
3       resolve serious credible derogatory allegations developed  
4       in connection with a personnel security investigation of  
5       a Department of Defense civilian or contractor employee  
6       or a member of the Armed Forces, if the allegation cannot  
7       be resolved in any other manner and the consent of the  
8       individual who is to be given the polygraph examination  
9       is obtained.''.  
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Mr. BENNETT. Mr. Hopkins.

**STATEMENT OF HON. LARRY J. HOPKINS, A REPRESENTATIVE  
FROM KENTUCKY, RANKING MINORITY MEMBER, INVESTIGA-  
TIONS SUBCOMMITTEE**

Mr. HOPKINS. Thank you, Mr. Chairman.

I want to add my support for this amendment to H.R. 4681. As reported out of the Post Office and Civil Service Committee H.R. 4681 would prohibit Federal agencies, including the Department of Defense, from conducting polygraph examinations to protect extremely sensitive intelligence information, except when conducting a specific criminal investigation.

The problem with this approach is that the bill excludes both the Central Intelligence Agency and the National Security Agency from its provisions. In other words, CIA and NSA can continue to use the polygraph to protect our Nation's most highly guarded and sensitive intelligence information. But DOD employees have access to exactly the same information. There is frequent exchange and sharing of intelligence information between CIA, NSA, and DOD, including the Defense Intelligence Agency. Thus, it makes absolutely no sense to protect two-thirds of our intelligence chain and ignore the remaining one-third.

Put another way, it makes no sense, in my opinion, to lock the front door on your house and put locks on all the windows to protect against burglars and then leave the back door wide open.

In recommending this action, our subcommittee recognizes that polygraph is not perfect. And exactly for that reason, we have attempted to very narrowly define the exact circumstances under which DOD can use the polygraph. Those instances were outlined to you in the chairman's letter of September 13. We have not, and may I repeat, we have not attempted, to give DOD unrestricted license to use polygraph examinations. DOD's authority under our amendment is much more restrictive than what H.R. 4681 would allow for use by the CIA and NSA.

This approach, in my opinion, is no more than common sense and I urge my colleagues to support it, Mr. Chairman.

Thank you very much.

Mr. BENNETT. Are there any comments or inquiries any members would like to make about this bill?

Mr. STUMP. Mr. Chairman.

Mr. BENNETT. Yes.

Mr. STUMP. I would like to make a statement, if I may.

Mr. Chairman, the Intelligence Committee has not taken a position on H.R. 4681 which is currently pending in that committee, as well as in this committee.

From my position serving on both the Armed Services and the Intelligence Committee, I am particularly concerned about the importance of ensuring full protection for the Nation's most sensitive defense and intelligence secrets. H.R. 4681, as reported by the Post Office and Civil Service Committee, only provided a small part of the necessary protection for said secrets by exempting the Central Intelligence Agency and NSA from the bill's restriction.

The Subcommittee on Investigations of this committee has improved the bill significantly with the Nichols' amendment that provides for appropriate polygraph use for the Department of Defense.

However, H.R. 4681 as amended to exempt CIA and NSA and DOD would provide only some of the protection necessary for the Nation's most sensitive secrets. There are other agencies similarly affected. A particularly glaring flaw in H.R. 4681 is the lack of an exemption for the national security work of the Federal Bureau of Investigation in sensitive counterintelligence activities.

I must honestly say that I believe that Congress, and to some extent, the administration, is dealing with this issue in a very haphazard way. These issues are absolutely critical to the security of this Nation's most sensitive defense and intelligence activities and our legislative goals should be to protect such sensitive information.

Thank you, Mr. Chairman.

Mr. NICHOLS. Will the gentleman yield?

Mr. STUMP. Certainly.

Mr. NICHOLS. Let me comment to the gentleman and commend him on his statement. And I would say to the gentleman that I would hope at this late date that the Intelligence Committee might take some action on this, although I realize there is a September 21 deadline that all the committees have to meet on the issue. I just feel that there are some areas of sensitivity within the Department of Defense that are just as sensitive as the CIA, just as sensitive as the National Security Agency. And to blatantly prohibit the use of polygraph in interrogating people who might have access to this sensitive material, I think it is just as wrong as it can be, and I strongly support the amendment that our committee passed.

Mr. STUMP. Mr. Chairman.

Mr. NICHOLS. I will be glad to answer any questions that anybody has about the bill.

Mr. STUMP. I apologize that I have been absent, and I do support the amendment. I am just simply saying that I do not think that we have gone far enough; that we should have made an exemption for counterintelligence activities within the FBI, and that the bill

still rests before the Intelligence Committee. Why we have not taken it up, I have not had a chance to ask the chairman. I do not know whether we will or not. I am sure that these problems could be addressed on the floor when and if it does reach the floor in the last few days.

Mr. BENNETT. Would you like to offer an amendment at this point?

Mr. STUMP. Not at this time, Mr. Chairman.

Mr. COLEMAN. Mr. Chairman.

Mr. BENNETT. Mr. Coleman.

Mr. COLEMAN. I have a question for the chairman of the Investigations Subcommittee. Would he consider an amendment that I have drafted on page 2, line 16, that suggests, as he did in exemption No. 4, that in No. 5, "if a polygraph examination is necessary," rather than say, "for determining," I would like to put in the words, "to assist in determining".

I think there are a number of Members of Congress, and I am one of them, that would prefer to continue to believe that it is a tool, but not a definitive answer to all the necessary questions.

If you would like to, I would send up the amendment just for your consideration, Mr. Chairman.

Mr. LALLY. Mr. Coleman, at what point is that?

Mr. COLEMAN. That was on page 2.

Mr. LALLY. Yes, sir.

Mr. COLEMAN. Of the Nichols' amendment.

Mr. LALLY. Yes, sir.

Mr. COLEMAN. On line 16. I would strike the word "for" at the end of that sentence, that line, and replace it with the words "to assist in."

Mr. BENNETT. What page is it in—

Mr. LALLY. Page 2 of the amendment, Mr. Chairman.

Mr. BENNETT. Page 2 of the amendment, OK. Line 16?

Mr. LALLY. Line 16.

Mr. BENNETT. OK.

Mr. COLEMAN. Strike out the word "for" and replace it with the words "to assist in".

Mr. NICHOLS. Mr. Chairman, could I be heard?

Mr. BENNETT. The gentleman from Alabama.

Mr. NICHOLS. Let me say I have no objection to the gentleman's amendment. I do not think it materially changes the intent of what we are trying to do. I would accept the amendment.

Mr. BENNETT. Without objection, that will be accepted. No objections?

The amendment to the amendment is accepted.

Any other suggestions?

Mrs. HOLT. Mr. Chairman.

Mr. BENNETT. Mrs. Holt.

Mrs. HOLT. I would like to ask a question about the status of the legislation.

Now, will the three committees, if the Select Committee on Intelligence has a hearing on this, will the three committees meet and—how will you work out the final bill?

Mr. NICHOLS. Let me ask Mr. Lally if he will respond to that.

Mrs. HOLT. All right.

Mr. LALLY. Mrs. Holt, there would be the possibility of the committees coming up with an agreed text to be taken to the House. Or, if that did not occur, the amendment reported by this committee would be in order as an amendment to be considered in the Committee of the Whole in its consideration of the bill.

Mrs. HOLT. And whatever came out of the Intelligence Committee would also be in order.

Mr. LALLY. Would also be in order as an amendment.

Mr. BENNETT. Any other suggestions or amendments?

[No response]

Mr. BENNETT. There being none, if there is no objection the bill as amended, will be approved.

Is there any objection?

[No response]

Mr. BENNETT. There being no objection, the bill as amended is approved. And that is it. [Whereupon, the hearing was adjourned at 10:58 a.m.]

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